

STATE OF MICHIGAN
UNEMPLOYMENT INSURANCE APPEALS COMMISSION

In the Matter of

Appeal Docket No.: [REDACTED] 22-003757

UIA Case No.: [REDACTED]

Claimant.

Decided *En Banc*

DECISION OF UNEMPLOYMENT INSURANCE APPEALS COMMISSION

On June 13, 2022, the Unemployment Insurance Agency (Agency) issued a redetermination that found the claimant ineligible for benefits under Section 241 of the Continued Assistance Act (CAA) and Section 28(1)(a) of the Michigan Employment Security Act (Act), for failure to submit documentation substantiating employment, self-employment, or plans to commence either. A “Weeks of OverPayment” document issued with the redetermination indicated that the claimant owed \$2,300.00 in restitution, for the weeks ending January 2, 2021 through January 30, 2021.

The claimant timely appealed the redetermination, and a hearing was held before an Administrative Law Judge (ALJ) on August 11, 2022, at which time the claimant appeared and testified. On September 6, 2022, the ALJ issued a decision that modified the June 13, 2022 redetermination by waiving restitution for the weeks ending January 2, 2021 through January 30, 2021, based on administrative or clerical error, pursuant to Section 62(a)(iii) of the Act.

This case is now before the Unemployment Insurance Appeals Commission (Commission) pursuant to a timely appeal by the Agency from the ALJ’s decision.

Pursuant to Executive Order No. 2019-13(g)(3)(g), the Commission determined that this case should be reviewed and decided by the full Commission.

On April 14, 2023, the Commission issued an order to admit additional evidence. The parties were permitted 14 days to object to or refute this evidence. No objections or refutations have been received. As such, the Commission admits as Exhibit 4, a six-page document entitled “Request for Information” (RFI) addressed to the claimant, with a mail date of February 25, 2021 and Letter ID L0094006390. It directed the claimant to return the completed form to the Agency by May 27, 2021.

After reviewing the record, we find that the ALJ’s decision must be modified. Our reasons are as follows.

First, we note that the ALJ admitted three exhibits on the record at the hearing, including a letter from the claimant’s employer stating that the claimant had been employed with it since August 31, 2020 (Ex. 1) and a seven-page Labor Report detailing claimant’s work hours and wages in 2020 (Ex. 2) The third exhibit consists of a 2020 W-2 from that employer and is marked

Exhibit 3 but it is not mentioned on page 2 of the ALJ's decision. We correct the ALJ's decision accordingly.

The June 1, 2021 Agency determination stated:

You were required to submit documentation substantiating your employment or self-employment or planned commencement of employment or self-employment **by May 27, 2021**. [Emphasis added.]

It continued on to state that, "You did not report as directed," and thus the Agency ruled that she was ineligible. At some uncertain date in 2021, the claimant submitted Exhibits 1-3 to the Agency. It appears likely that they were not submitted by the May 27, 2021 deadline set forth in the RFI.

The Agency's appeal concedes that the claimant's documentation is sufficient to meet the requirements in Section 241 of the CAA, but the Agency asserts that the ALJ did not consider whether the claimant had good cause for submitting that documentation late. The Agency also notes that the ALJ did not make an explicit finding as to the claimant's eligibility for benefits. The Agency asks that the Commission either determine the eligibility issue or remand for rehearing.

This case involves a claim for Pandemic Unemployment Assistance (PUA) benefits. PUA was established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The portion of the CARES Act known as the PUA program (codified as 15 USC 9021) provides benefits to individuals who were unable or unavailable to work for reasons directly related to the COVID-19 pandemic. To be eligible for PUA benefits, a claimant must be a "covered individual" as defined in the CARES Act. Initially, the CARES Act allowed claimants to self-certify their eligibility for benefits. In other words, claimants could simply assert that they were able and available for work and that the COVID-19 pandemic precluded them from working. See 15 USC 9021(a)(3)(A)(ii).

In December 2020, Congress amended the CARES Act, through Section 241 of the CAA, to require claimants to provide documentation to substantiate their pre-claim employment as a requirement for the PUA benefit extension for weeks ending January 2, 2021 through September 4, 2021. As such, a claimant must provide documents that establish work force attachment to be eligible for the extension of benefits.

While the CAA sets forth the broad mandate for substantiating documents, the specifics of that mandate are set forth in Unemployment Insurance Program Letter (UIPL) No. 16-20, Change 4 (January 8, 2021).¹ It sets forth the type of documents that qualify, the deadline for the provision of the documents by the claimant,² and the period of time for which the claimant may show work force attachment. This is known as the *documentation period*. The documentation period for each claimant is different and is based upon the claim effective date for PUA benefits.³ The

¹ The UIPL was issued by the Employment and Training Administration Advisory System of the U.S. Department of Labor.

² Individuals who do not meet the deadline are not eligible for PUA, but the deadline can be extended for "good cause." *Id.* p I-11.

³ The Agency uses the benefit year beginning (BYB) date as the claim effective date.

documentation period is the full period of time for which a claimant can provide documents that substantiate employment, self-employment or planned commencement thereof.

Importantly, under the UIPL, state agencies are required to notify claimants of the new requirement. *Id.*, Attachment I, Section C.2.d., at I-12.⁴ In Michigan, the Agency sent claimants a Request for Information (RFI). The RFI served as both notice of the new requirement and directions on how to comply. Problematically, the RFI that was issued to this claimant (Ex. 4) sets forth a documentation period that is much shorter than that afforded under the UIPL.

We first turn to the calculation of the documentation period in the context of this case to define the scope of the problem. The RFI establishes the documentation period as **the calendar year 2019**, stating as follows:

Based on your claim effective date of November 8, 2020, you are required to submit documentation for the 2019 calendar year. This is referred to as your “documentation period.” You must submit the documentation by May 27, 2021. [Ex. 4 at 2.]

The RFI then asks a series of questions about the type of employment in which the claimant was engaged *in the calendar year 2019* and provides instructions on the type of documentation to provide based on the type of employment in that year. *Id.* at 2-4.

At the crux of this matter is that the 2019 calendar year, as set forth in the RFI, is a substantially shorter period than is permitted the claimant under the UIPL to demonstrate work force attachment. Under the UIPL, the starting point for calculation of the documentation period is the claim effective date, measured backward to January 1 of the previous tax year:

...Such documentation must demonstrate proof of employment or self-employment (or the planned commencement of such employment or self-employment) **at some point between the start of the applicable taxable year and the date of filing.** For example, an individual filing a **claim effective** December 27, 2020, must submit documentation that substantiates employment or self-employment which occurred between January 1, 2019 (the start of the applicable tax year) and December 27, 2020. [UIPL 16-20, Change 4, at I-11 (emphasis added).]

The claim effective date for this claimant is November 8, 2020 (as set forth in the quoted text from the RFI above), thus the correct documentation period for this claimant is January 1, 2019 through November 8, 2020. As such, the RFI deprived the claimant of the opportunity to present documents that could demonstrate her work force attachment for the more than ten-month period from January 1, 2020 through the first week of November 2020. In sum, the RFI wrongly limited

⁴ That section provides, “[s]tates must notify individuals filing new PUA claims...and individuals filing PUA continued claims...of the requirement to provide documentation to substantiate their employment or self-employment (or planned commencement of employment or self-employment).”

the documentation period to the 2019 calendar year and provided erroneous instructions on how to comply with the mandate under the CAA.

We must next consider the impact of the Agency's failure to provide instructions to the claimant that accurately reflected her rights under the CAA and the UIPL. In this case, the Agency ruled in both the determination and the redetermination that the claimant was ineligible because she did not submit substantiating documents within the deadline set forth in the RFI.

Considering the defect in the RFI, we must determine whether the RFI was effective to trigger the claimant's duty to submit documents *by the deadline* set forth in the RFI. For the reasons set forth below, we hold that it is not.

Under the UIPL, the claimant's requirement to provide documents for continued claims is not triggered until the claimant is "directed" to provide the documents by the Agency.⁵

- i. **Filing Continued Claims for PUA.** Individuals who filed for PUA before January 31, 2021, and receive payments of PUA on or after December 27, 2020, (regardless of which week ending date is being paid), *are required to submit documentation* substantiating employment or self-employment, or the planned commencement of employment or self-employment, *within 90 days of the application or when directed to submit the documentation by the State Agency, whichever is later.* [*Id.*, Section 4.b., at 5 (emphasis added).]

While the RFI directed the claimant to provide documents, it did not give her the benefit of the full documentation period. This case demonstrates that this difference could be consequential. Here, the claimant had not been employed in 2019, but testified to being employed in 2020 prior to filing her claim in November 2020; furthermore, her documents substantiated this employment. However, based on the RFI, she would have no reason to submit 2020 documents to the Agency.

In this highly technical area of law, claimants are reliant upon the Agency to provide them with accurate information and instructions on how to comply with the new requirements. As noted above, the state's duty to provide information is explicitly set forth in the UIPL. The states are required to "notify" claimants of the new requirements to continue to receive benefits. UIPL 16-20, Change 4, Attachment I, Section C.2.d., at I-12. Incorporated therein is the duty to provide accurate information on how to satisfy the new requirement.

We must also consider Section 303(a)(1) of the Social Security Act which provides that as a condition for receiving UC administrative grants, state laws must provide for "such methods of administration...as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due."⁶

⁵ While the UIPL also includes the date of the application as the starting point for the deadline, it is nearly impossible to imagine a scenario in Michigan in which the Agency provided direction to the claimant to provide documents for a continued claim prior to the date of the application.

⁶ We recognize that Section 303(a)(1) is directed at state laws. However, agency instructions, notices, and directives to claimants are equally important to the administration of the program.

In this case, the Agency failed in its duty to provide the claimant with accurate information and did so in a way that significantly shortened the period of time for which she could show workforce attachment. As a consequence, this claimant could be deprived of payment of benefits that are *due* within the meaning of Section 303(a)(1).

In *McBride v Americana Mobile Home Park*, 173 Mich App 275; 433 NW2d 336 (1988), the Michigan Court of Appeals dealt with an analogous issue. At issue in that case was whether the time period to appeal a determination had begun to run where the employer did not receive that determination. The claimant argued that it had, because the employer was on notice that the claimant was receiving benefits by virtue of its receipt of cancelled benefit checks (known at that time as benefit check determinations). However, the Court of Appeals rejected this argument, noting that those checks did not provide *notice* of the right to appeal:

Had respondent received its copy of the determination, that form would have clearly spelled out the applicable appeal procedure and the time limitations involved. Instead, respondent received copies of benefit checks which, although constituting a determination, nonetheless did not properly apprise respondent of its rights to appeal the initial determination. Because respondent was unaware of its appeal rights, respondent understandably did nothing until its contribution rate increased dramatically. By then, all the appropriate appeal periods had expired and respondent was never provided the opportunity to have its case determined on the merits. [*Id.* at pp. 281–82 (emphasis added).]

The Court concluded that there was no evidence that the employer had been afforded its right to notice consistent with the statutory mandate in Section 32a(1) of the Act, and the appeals period had, therefore, not yet begun.

Similarly, in the instant matter, we find that the claimant's deadline for providing documents had not expired. Whereas in *McBride*, the appeals period is triggered by an appropriate notice, **the deadline for submission of substantiating documents under the UIPL is triggered by an effective directive. In this case, the RFI provided inaccurate instructions in a manner that could result in deprivation of benefits that are due. Thus, it was not an effective directive within the meaning of the UIPL and the deadline set forth in the RFI for submission of documents was not triggered. In such a case, a claimant should not be deemed ineligible for failure to meet the deadline. Rather, the claimant's documents, even if submitted after the deadline, should be evaluated to determine whether they meet the requirements under the CAA. Because the RFI was not an effective directive, good cause for late submission need not be established.**

We next consider whether the claimant's documents meet the requirements under Section 241 of the CAA. The letter on the employer's letterhead (Ex. 1) indicated the claimant began working for the employer on August 31, 2020. The labor report (Ex. 2) shows that the claimant worked from September 5, 2020 through November 15, 2020. The claimant's W-2 (Ex. 3) reflects that the claimant earned \$1,417.35 with the employer in 2020. As noted above, the claimant's documentation period was from January 1, 2019 through November 8, 2020.

Accordingly, we find that the documentation submitted by the claimant establishes that she was employed and attached to the labor market during her documentation period.

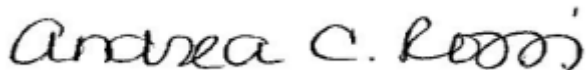
THEREFORE, for the reasons stated above, the ALJ's September 6, 2022 decision is MODIFIED.

We correct the ALJ's order to include Exhibit 3 – the claimant's 2020 W-2 - as admitted by the ALJ at the hearing. The claimant is eligible for benefits under Section 241 of the CAA, having submitted the required documentation substantiating employment. She does not owe restitution for benefits paid for the weeks ending January 2, 2021 through January 30, 2021.

This matter is referred to the Agency for action consistent with this decision.



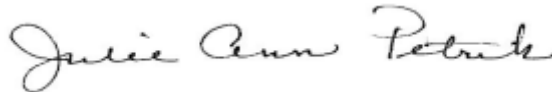
Alejandra Del Pino, Commissioner



Andrea C. Rossi, Commissioner



George Wyatt III, Commissioner



Julie A. Petrik, Chairperson



Lester A. Owczarski, Commissioner



Mikhail Albuseiri, Commissioner



William J. Runco, Commissioner

MAILED AT LANSING, MICHIGAN May 30, 2023

This decision shall be final unless EITHER (1) the Unemployment Insurance Appeals Commission RECEIVES a written request for rehearing on or before the deadline, OR (2) the appropriate circuit court RECEIVES an appeal on or before the deadline. The deadline is:

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME. June 29, 2023